

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Applicant : John Eugene Merkley, Jr.
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Title : INTEGRATED FINANCIAL PROCESSING SYSTEM
AND METHOD FOR FACILITATING AN INCENTIVE PROGRAM

Moline, IL 61265

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Commissioner for Patents
P. O. Box 1450
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Appeal Brief of Appellants

Sir:

This Appeal Brief of Appellants is in reply to the Office Action, dated 05/28/2010 finally rejecting claims 1-33. Appellant timely filed the Notice of Appeal on this matter on 8/30/2010.

TABLE OF CONTENTS

COVER SHEET	Page 1
TABLE OF CONTENTS	Page 2
I. REAL PARTY IN INTEREST	Page 3
II. RELATED APPEALS AND INTERFERENCES	Page 4
III. STATUS OF CLAIMS	Page 5
IV. STATUS OF AMENDMENTS	Page 6
V. SUMMARY OF CLAIMED SUBJECT MATTER	Page 7
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	Page 11
VII. ARGUMENT	Page 12
VIII. CLAIMS APPENDIX	Page 26
IX. EVIDENCE APPENDIX	Page 34
X. RELATED PROCEEDINGS APPENDIX	Page 35

I. REAL PARTY IN INTEREST

The real party in interest is Deere & Company to whom this application was assigned by Appellants per the assignment document recorded in the United States Patent and Trademark Office on, at Reel/Frame: 014541/0806 on or about 9/22/2003.

II. RELATED APPEALS AND INTERFERENCES

An Appeal Brief for Application No. 10/667,774 was filed on or about April 20, 2010 and is a pending appeal with an appeal number (to be determined). The present Application No. 10/667,851, filed 9/22/2003, and Application No. 10/667,774, filed 9/22/2003, both claim the benefit of the filing date of U.S. Provisional Application 60/439,572, filed 1/10/2003, and entitled INTEGRATED FINANCIAL PROCESSING SYSTEM AND METHOD FOR FACILITATING AN INCENTIVE PROGRAM, under 35 U.S.C. § 119 (e). As of the filing date of this Appeal Brief, there are no other related appeals and interferences other than noted above.

III. STATUS OF CLAIMS

Claims 1-33 are presently pending in the above-identified application, and have been finally rejected. Claims 1, 11, 21, 25, and 27-33 were previously presented. Claims 2-10, 12-20, 22-24, and 26 are original. Claims 1-33 are the subject of this appeal.

A copy of the appealed claims is set forth in the attached **CLAIMS APPENDIX**.

IV. STATUS OF AMENDMENTS

The Amendment in reply to the Office Action, dated 11/16/2009, has been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

All paragraph numbers referenced below coincide with those that appear next to the left margin in the application, as filed, in which the paragraph following the title was not counted.

Claim 1

In accordance with one embodiment, a method, for facilitating an incentive program via an electronic data processing system (E.g., p. 3 at para. 18; FIG. 1A.), comprises the following:

- establishing a library as a comprehensive list of available incentive programs, for agricultural input products targeted to producers of agricultural products (E.g., p. 2 at para. 7.), the library stored in a data storage device associated with the data processing system (E.g., p. 4 at para. 20.);

- selecting, by a particular retailer with a retail level of access to the data processing system (E.g., p. 8 at para. 30 and p. 13 at para. 53.), the available incentive programs from the library of incentive programs through the discretion of the particular retailer servicing a particular producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs (E.g., p. 17 at para. 72.), the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs (E.g., p. 8 at para. 30 and 33, p. 13 at para. 53, and p. 13 at para. 72 and 73.);

- receiving crop planning data of the particular producer at the data processing system via an interface, the crop planning data comprising background data on the particular producer or the producer's operations (E.g., p. 14 at para. 60; FIG. 2, p. 23 at para. 97; pp. 23-24 at para. 100.);

- searching the library or its selected, available incentive programs based upon the received crop planning data to select a tailored list of candidate incentive programs from the established library of available incentive programs (E.g., p. 2 at para. 7; p. 4 at para. 19; p. 13 at para. 53; p. 14 at para. 56.);

- making information accessible on or limited to the available candidate incentive programs in the tailored list to the particular producer via the interface

(E.g., p. 2 at para. 7; p. 14 at para. 57.);

supporting selection of a preferential one of the candidate incentive programs via the interface (E.g., p. 2 at para. 7; p. 14 at para. 58.); and

transferring the crop planning data and incentive program data on the preferential one from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system (E.g., pp. 3-4 at para. 18 and 19; FIG. 1; p. 15 at para. 60; p. 20 at para. 83.) to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs (E.g., p. 3 at para. 7.) and the financial screening process associated with financing of the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered background data (E.g., p. 11 at para. 44, p. 20 at para. 86, and p. 23 at para. 97.)

Claim 11

In accordance with another embodiment, a method, for facilitating an incentive program via an electronic data processing system (E.g., p. 3 at para. 18; FIG. 1A.), comprises the following:

establishing a library as a comprehensive list of available incentive programs, for agricultural input products targeted to producers of agricultural products (E.g., p. 2 at para. 7.), the library stored in a data storage device associated with the data processing system (E.g., p. 4 at para. 20.);

selecting, by a particular retailer with a retail level of access to the data processing system (E.g., p. 8 at para. 30 and p. 13 at para. 53.), the available incentive programs from the library of incentive programs through the discretion of the particular retailer servicing a producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs (E.g., p. 17 at para. 72.), the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs (E.g., p. 8 at para. 30 and 33, p. 13 at para. 53, and p. 13 at para. 72 and 73.);

gathering background data on at least one of the producer and operations of

the producer via an interface for communication to the data processing system (E.g., p. 20 at para. 86.);

searching the library of available incentive programs based upon the gathered background data on the particular producer or the producer's operations to select a tailored list of available incentive programs from the established library (E.g., p. 2 at para. 7; p. 4 at para. 19; p. 13 at para. 53; p. 14 at para. 56; p. 18 at para. 77; p. 21 at para. 87.);

making information accessible on or limited to the available incentive programs in the tailored list to the producer via the interface (E.g., p. 2 at para. 7; p. 14 at para. 57.);

supporting selection of a preferential one of the available incentive programs via the interface (E.g., p. 2 at para. 7; p. 14 at para. 58.); and

transferring the gathered background data and selected incentive program data from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system (E.g., pp. 3-4 at para. 18 and 19; FIG. 1; p. 15 at para. 60; p. 20 at para. 83.) to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs (E.g., p. 3 at para. 7.) and the financial screening process associated with financing the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered background data. (E.g., p. 11 at para. 44, p. 20 at para. 86, and p. 23 at para. 97.)

Claim 21

In accordance with one embodiment, a data processing system (E.g., p. 3 at para. 18; FIG. 1A.) for facilitating an incentive program comprises the following:

a program management module for establishing a library of available incentive programs (E.g., p. 17 at para. 71; p. 2 at para. 7.) for a producer and for gathering background data on at least one of the producers and operations of the producer, for agricultural input products targeted to producers of agricultural products (E.g., p. 20 at para. 86.), the library stored in a data storage device associated with the data processing system (E.g., p. 4 at para. 20.), the available incentive programs selected, by a retailer with a retail level of access (E.g., p. 8 at para. 30 and p. 13 at para. 53.), from a comprehensive list of incentive programs through the discretion of a particular retailer servicing the producer based on retailer

preferences comprising a geographic region that the retailer services, historic sales, or a supplier relationship with one or more suppliers of the incentive programs (E.g., p. 17 at para. 72.), the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs (E.g., p. 8 at para. 30 and 33, p. 13 at para. 53, and p. 13 at para. 72 and 73.);

a search engine for searching the library of available incentive programs based upon the gathered background data on the particular producer or the producer's operations to select a candidate list of candidate incentive programs from the library of available incentive programs (E.g., p. 14 at para. 55-56; p. 2 at para. 7; p. 4 at para. 19; p. 13 at para. 53.);

a selector for supporting selection of preferential one of the candidate incentive programs for a financial application (E.g., p. 19 at para. 80.); and

a transferring agent for transferring the gathered background information and selected preferential incentive program from a program manager for the incentive programs to a financial screening process of a financial screening system (E.g., p. 6 at para. 24.) of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs (E.g., p. 3 at para. 7.) and the financial screening process associated with financing the products, where an application data capture module populates an application for the financial product based on the gathered background data (E.g., p. 11 at para. 44, p. 20 at para. 86, and p. 23 at para. 97.).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are whether:

1. claims 1-5, 7-9, 11-15, 17-19, 21-23 and 25-30 are properly rejected based on 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2001/0047307 A1 ("Bennett") in view of U.S. Pub. No. 2003/0163401 A1 ("Dines") and in further view of the publication of D. Aaker, V. Kumar, and G. Day, Marketing Research (Seventh Edition) ("Aaker") and in further view of U.S. Pub. No. 2002/0077867 A1 ("Gittins."); and
2. claims 6, 10, 16, 20, 24 and 31-33 is properly rejected based on 35 U.S.C. § 103(a) as being unpatentable over Bennett, Dines and Aaker and further in view of Official Notice.

VII. Argument

Claims 1-33 are pending in the application. Claims 1, 11, 21, 25 and 27-33 were previously presented. Claims 2-10, 12-20, and 22-24, and 26 are original. Claims 1-33 are the subject of this appeal.

Comments on Examiner' Office Action, dated 5/28/2010

In the Office Action, dated 5/28/2010, the Examiner maintained various section 103 rejections of claims 1-5, 7-9, 11-15, 17-19, 21-23 and 25-30 in view of Bennett, Dines, Aaker, and Gittins for most claims, and in view of Bennett, Dines and Aaker with respect to claims 6, 10, 16, 20, 24 and 31-33.

The Obviousness Rejections of Claims 1 and 11 Misinterpret the Bennett Reference.

The above non-obviousness rejection of claims 1 and 11 misinterprets the Bennett reference in an attempt to meet the claims. A misinterpretation or misunderstanding of a prior art reference is a harmful error where it increases the likelihood that an inventor is erroneously denied a patent on the grounds of obviousness. *In Re Chapman*, 595 F.3d 1330, 1339 (Fed. Cir. 2010). Accordingly, because of the misunderstanding or misinterpretation of the prior art, the Examiner fails to state a prima facie case of obviousness and the claims qualify as patentable. See, e.g., *In Re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, (Fed. Cir. 1985).

Here, the Examiner misunderstands paragraphs 137, 143 and 154 of Bennett. In particular, the Examiner alleges that paragraphs 137, 143 and 154 of Bennett disclose the "newly added claim limitations related to access levels for retailers and producers and wherein the retailer controls the level of access for a producer thereby controlling what information the producer has access to see and select from." (Office Action on p. 10.) However, the following claim limitations (referenced above by the Examiner) are not disclosed in paragraphs 137, 143 and 154 of Bennett: **"selecting, by a particular retailer with a retail level of access to the data processing system, the available incentive programs from the library of incentive programs through the discretion of a particular retailer servicing a particular producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of**

access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs" as set forth in claim 1 and claim 11 (Emphasis added). "Access" can be defined as "to gain or have access to; esp., to retrieve data from, or add data to, a database," for example. *Webster's New World Dictionary*, Third College Ed. at p. 7.

In contrast to claims 1 and 11, paragraph 137 of Bennett merely discloses a "seller may request the selected loan and good or service information from the buyer's profile for further consideration" and the "seller may telephone the buyer, and while the buyer and the seller both are interacting to view the offer through the Internet, the seller may convince the buyer to complete the deal with or without modification to the current offering by decreasing the price, offering a different loan, or offering a different or additional good or service to the buyer." (Paragraph 137) Paragraph 137 does not teach, suggest or reference the claimed "retailer level of access" or "producer level of access," of a producer of agricultural products, or retailer controlling the level of access of the agricultural producers to the electronic data processing system, which are claimed features of claims 1 and 11.

In contrast to claims 1 and 11, paragraph 143 of Bennett merely discloses activity of the lender, rather than the seller or retailer, as follows: "Through online and/or telephonic interaction, at a block 1505, the affordability-based web server assists the lender in convincing the buyer to complete the transaction. This may involve adjustments by the lender to the financing offering, including, but not limited to, the term, the interest rate, the down payment, etc. The lender may similarly interact with a seller to convince the seller to select the lender by, for example, offering the seller an incentive possibly beyond those currently offered by other lenders for the transaction in issue. Such incentive may be a referral fee or an increase in the points paid for the seller's loan origination. The lender may also convince the buyer or seller by selecting and offering alternate financing options, such as leasing." Paragraph 143 does not teach, suggest or reference the claimed "retailer level of access" or "producer level of access," of a producer of agricultural products, or retailer controlling the level of access of the agricultural producers to the electronic data processing system, which are claimed features of claims 1 and 11.

In contrast to claims 1 and 11, paragraph 154 appears to be cumulative with

the above references to Bennett, where the "web server interacts with a buyer's, lender's or seller's browser to cause the display of various information regarding finance offerings so that an offering may be selected or adjusted based on a comparison of competing finance offerings. For example, a lender may interact with the affordability-based web server to compare the loan offering that was automatically generated using the lender's loan parameters with other lender's loan offerings. In response, the lender may adjust, for example, its interest rate to entice the buyer into selecting its loan offering over that of its competitors. Likewise, the lender might adjust the point allocation for origination to entice a seller into selecting the lender's loan offering over other lender's offerings." Paragraph 154 does not teach, suggest, or reference the claimed "retailer level of access" or "producer level of access," of a producer of agricultural products, or retailer controlling the level of access of the agricultural producers to the electronic data processing system, which are claimed features of claims 1 and 11.

For the foregoing reasons related to misunderstanding the Bennett reference, Applicants respectfully request reversal of the above rejections of claims 1 and 11. Claims 2-10, 27, 28 and 31 depend on claim 1 and are patentable for at least similar reasons to claim 1. Claims 12-20, 29, and 32 depend on claim 11 and are patentable for at least similar reasons to claim 11.

The Obviousness Rejections of Claims 1 and 11 Use Applicant's Claims as a Template to Select and Contrive a Combination of Elements from Multiple References with Improper Hindsight.

Hindsight is to be avoided in invalidating claims based on obviousness allegations. See, e.g., *In re Kahn*, 441 F.3d 977, 986 (Fed. Cir. 2006); *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966). "It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132 (Fed. Cir. 1985)."

A teaching, motivation or suggestion to combine the references may be used to guard against inappropriate use of hindsight in evaluation of the claims. See, e.g., *In Re Gorman*, 933 F.2d 982, 986-987 (Fed. Cir. 1991); *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (S. Ct. 2007). "Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to

the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit." See *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (S. Ct. 2007)). Here, there needs to be an articulated reason and rational underpinning to combine each of the four cited references cited as part of the obviousness rejection, consistent with due process requirements.

"In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. See *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986). Patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would reasonably be motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances", *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) -- in other words, common sense -- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor." *In Re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992.)

Here, the Examiner appears to argue that Gittins provides the motivation to combine Gittins with Bennett, Dines, and Aaker. "The motivation would be that Gittins provides another selection criteria which focuses on the supplier relationships and developing business relationships amongst suppliers in consideration of incentive and program selection criteria." (Office Action at p. 6.) However, Gittins fails to provide sufficient motivation to combine the references. Gittins is in an unrelated technical field of an automated claims fulfillment system for processing insurance claims for insurers (E.g., Para. 2, 14, and 337), as opposed to a method for providing an incentive program via an electronic data processing system for

producers of agricultural products (e.g., farmers) to facilitate financing of agricultural input products (e.g., machinery (such as tractors manufactured by the assignee of the present patent application), seed, and chemicals) as disclosed in claims 1 and 11. Accordingly, one of ordinary skill in the art of developing software, systems or method for financing the sale of agricultural inputs to agricultural producers would not reasonably look to Gittins insurance system, which weighs in favor of the patentability of claims 1 and 11.

Examiner's alleged justification for combining Aaker with the other references is stated as follows: "The motivation would be that Aaker describes basic marketing principles which are employed in various areas of business." (Office Action at p. 5) However, Aaker is focused on non-analogous prior art of an organizational database for industrial buyers (p. 693) in a marketing publication that would likely not be consulted by one of ordinary skill in art of developing software, systems or a related method for financing the sale of agricultural inputs to agricultural producers, with respect to claims 1 and 11.

Aaker provides no technical teaching of how to combine the organizational database for industrial buyers with a separate system for facilitating financing of the agricultural input products to producers of agricultural products to meet claim 1 or claim 11. Additional prior art references would be required to teach the technical modifications necessary to combine the Aaker database with the method disclosed in claims 1 and 11.

Further, the Examiner's motivation for combining Aaker with the other references merely restates Aaker's subject matter in general terms without providing any convincing reason or reference to specific language within Aaker that teaches combining Aaker with an on-line purchasing system of Bennett or any Dines method of forming a loan agreement. Therefore, the Examiner's motivation for combining Aaker is nothing more than a conclusory statement without articulated reasoning, which is inconsistent with applicable case law. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (S. Ct. 2007). For the foregoing reasons related to improper use of hindsight and inadequate reasons for combining the references, Applicants respectfully request reversal of the above rejections of claims 1 and 11. Claims 2-10, 27, 28 and 31 depend on claim 1 and are patentable for at least similar reasons to claim 1. Claims 12-20, 29, and 32 depend on claim 11 and are patentable for at least similar reasons to claim 11.

Section 103 Rejections

Claims 1-5, 7-9, 11-15, 17-19, 21-23 and 25-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2001/0047307 A1 ("Bennett") in view of U.S. Pub. No. 2003/0163401 A1 ("Dines") and in further view of the publication of D. Aaker, V. Kumar, and G. Day, Marketing Research (Seventh Edition) ("Aaker") and in further view of U.S. Pub. No. 2002/0077867 A1 ("Gittins.") This rejection should be reversed for the following reasons.

Bennett

Bennett discloses an on-line purchasing system that supports buyer affordability screening. (Abstract.) Bennett selects buyers to whom incentives are distributed (e.g., via e-mail). (Bennett at paragraphs 146 and 151.) Bennett also selects loan offerings for a given good or service selected by a buyer. (Bennett at paragraphs 38 and 152.) The "affordability-based web server may identify an additional and superior loan offering or good pricing that may convince the buyer to complete the transaction." (Bennett at paragraph 146.) Bennett discloses that the "lender may identify buyers having pending underlying transactions involving, or who have shown interest in, the goods, services or financing of the lender or seller." (Bennett at paragraph 148.) Bennett references the "personal credit history" of the buyer (Bennett at paragraph 105) and "loan history" of loans within the lender's portfolio. (Bennett at paragraph 96.)

Dines

Dines discloses a method for forming a loan agreement where the lender contractually shares in the proceeds from a future sale of commodity. (Dines, Abstract and claim 1.) In Dines the lender shares in the grower's risk based on the price level of the commodity, for example. (Dines at paragraph 63.) The lender may provide a lower interest rate to the grower in exchange for the ability to share benefits when the market price of a commodity grown by the grower is high. (Dines, paragraphs 62 and 63.)

Aaker

Aaker discloses that "the system combines a database full of information

about customers' buying habits with analytical software that, among other things, gives buyers answers to key marketing questions: which products and colors sold best, which vendors were most profitable, which time of the year was best for selling particular items, like sneakers." (Aaker at page 691.) Aaker references "a database should attempt to create .. relevant **organization data for industrial buyers** .. perhaps information about the area of the organization's economic or social location..." (Aaker at page 693). Aaker discloses that "a database should attempt to create .. recency/frequency/monetary transaction history by date, dollar amounts (cumulative) of purchase, and product (lines) purchased." (Aaker at page 693.)

Gittins

Gittins discloses an automated claims fulfillment system for insurers that appears to be geared toward automobile insurers and collision auto repair shops that do business with the automobile insurer. (E.g., Paragraphs 2, 14, and 337.) "As auto-repair shops, suppliers 16 might bid, for example, for a slice of the volume within a particular metropolitan area." (Paragraph 337.) "Claims fulfillment system 18 receives bids from multiple suppliers 16 (for example, within a metropolitan area for auto-repair), compares bids and then works out the best combination of bids (which may be a combination of price, capacity, geography, service etc.). As an example, a system administrator may be able to select how the best combination should be determined. Alternatively, for example, claims fulfillment system 18 might automatically determine the best combination in accordance with programmed instructions, without allowing a system administrator to make any type of decision or selection." (Paragraph 339.)

Similarly, "in some embodiments of the present invention, for example, claims fulfillment system 18 might automatically assign the claim to one of the suppliers (i.e., repair shops) 16 with whom guaranteed future volume has been allocated within a particular metropolitan area. Alternatively, for example, claims fulfillment system 18 might simply present a list of approved suppliers to claimant 14 (see FIG. 1.), where the approved suppliers are those that won bids for future claims fulfillment volume. Claimant 14 could then select a supplier from the list." (Paragraph 370.) "Claimant 14 may be allowed to select a supplier from the list, or to select a different supplier not on the list. In such an embodiment, claimant 14 might be provided with incentives to select a supplier from the list." (Paragraph 370.)

The alleged combination of the four references lacks several claimed features in claim 1, 11 and 21 with respect to the selecting of available incentive programs as noted below.

Even if Bennett, Dines, Aaker, and Gittins could be combined, the alleged combination of Bennett, Dines, Aaker, and Gittins would not meet claim 1, claim 11, or claim 21. In particular, the alleged combination of Bennett, Dines, Aaker, and Gittins lacks: **"selecting, by a particular retailer with a retail level of access to the data processing system, the available incentive programs from the library of incentive programs through the discretion of a particular retailer servicing a particular producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs"** as set forth in claim 1 and claim 11 (Emphasis added). Similarly, claim 21 calls for **"the available incentive programs selected, by a retailer with a retail level of access, from a comprehensive list of incentive programs through the discretion of a particular retailer servicing the producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, or a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs."** (Emphasis Added.)

The Office Action acknowledges that "neither Bennett nor Dines disclose selecting incentive programs based on retailer preferences comprising a geographic region that the retailer services, historic, sales and a supplier relationship with one or more suppliers of the incentive programs." (Office Action at p. 5.)

Aaker does not make up for the above noted deficiency in Bennett and Dines.

Aaker merely discloses information for industrial buyers, as opposed to the selection of available incentive programs based on retailer discretion, as noted above. In particular, Aaker discloses that "the system combines a database full of information about customers' buying habits with analytical software that, among other things, gives buyers answers to key marketing questions: which products and colors sold best, which vendors were most profitable, which time of the year was best for selling particular items, like sneakers." (Aaker at page 691.) Aaker references "a database should attempt to create .. relevant **organization data for industrial buyers** .. perhaps information about the area of the organization's economic or social location..." (Aaker at page 693). Aaker discloses that "a database should attempt to create .. recency/frequency/monetary transaction history by date, dollar amounts (cumulative) of purchase, and product (lines) purchased." (Aaker at page 693.) Aaker provides no technical details on how its database for industrial buyers could be combined with the on-line sales system of Bennett or the lending method of Dines to meet the claims.

The Office Action cites Gittins in an attempt to make up for the above noted deficiencies in the alleged combination of Bennett, Dines, and Aaker. However, Gittins has significant differences with respect to the claim language of claims 1, 11 and 21.

First, Gittins, alone or in combination, does not select "available incentive programs from the library" that are available through the retailer as recited in claim 1, 11, and 21. Instead of selecting incentive programs, Gittins merely discloses the selection of one or more suppliers. Gittins allows the insurer to favor the selection of suppliers that offer discounts in exchange for volume of auto repair work. Although Gittins references incentives, it is not in the context of the insurer selecting available incentive programs from a list, but rather "claimant 14 might be provided with incentives to select a supplier from the list." (Paragraph 370.) Here, the insurer in Gittins appears to have a financial interest in the insured selecting a supplier consistent with the insurer meeting "the volume guaranteed to suppliers." (Paragraph 370.)

Second, the Gittins claim fulfillment system does not mention or disclose the provision of different levels of access of the data processing system, such as the claimed retailer level of access and the producer level of access, as set forth in claims 1, 11 and 21. "In some embodiments of the present invention, for example,

claimant 14 may be allowed to select a supplier from the list, or to select a different supplier not on the list." (Paragraph 370.) Accordingly, in some embodiments, Gittins appears to teach away from the claims by suggesting that the insurer and the customer have the same level of access with respect to listed and unlisted suppliers. Although Bennett selects buyers to whom incentives are distributed via e-mail (Bennett at Paragraphs 146-151), claims 1, 11 and 21 call for a producer level of access directly to the data processing system.

Third, in one embodiment of Gittins, the "claims fulfillment system 18 might automatically assign the claim to one of the suppliers (i.e., repair shops) 16 with whom guaranteed future volume has been allocated within a particular metropolitan area." (Paragraph 370.) Here, Gittins appears to deprive the customer of any further selection, contrary to claims 1, 11, and 21 that provide for "supporting selection of a preferential one of the candidate incentive programs via the interface."

The above noted differences between the claim language (of claims 1, 11 or 21) and the alleged combination favors a finding of nonobviousness under the analysis of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The section 103 rejection does not meet claims 1, 11, and 21 because the alleged combination lacks at least the above noted claimed features.

The Office Action's section 103 rejection is based on selectively picking certain features from different references and cobbling together those selected features from four different references in a contrived way with the benefit of improper hindsight in an attempt to meet the claims, as explained above in more detail with respect to claims 1 and 11. The claim in the patent document under analysis may not be used in hindsight to show the obviousness of combining individual elements selected from different references. See, e.g., *Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309 (Fed. Cir. 1985).

For the foregoing reasons, the alleged combination of Bennett, Dines, Aaker and Gittins does not meet claim 1, claim 11, or claim 21 and the claims are nonobvious. Claims 2-10, 27, 28 and 31 depend on claim 1 and are patentable for at least similar reasons to claim 1. Claims 12-20, 29, and 32 depend on claim 11 and are patentable for at least similar reasons to claim 11. Claims 22-26, 30 and 33 depend upon claim 21 and are patentable for at least similar reasons to claim 21. Applicants respectfully request reversal of the section 103 rejection of the above claims.

The alleged combination lacks several claimed features in claim 1, 11 and 21 with respect to the transferring of crop planning data or incentive program data from a program manager to financial screening process as noted below.

Even if it were possible to combine Bennett, Dines, Aaker, and Gittins the alleged combination of Bennett, Dines and Aaker would not meet claim 1, 11 or 21.

With respect to claim 1, the alleged combination lacks at least the features of "transferring the crop planning data and incentive program data on the preferential one from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing of the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered background data."

Similarly, claim 11 recites "transferring the gathered background data and selected incentive program data from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered background data."

Similarly, claim 21 calls for "transferring the gathered background information and selected preferential incentive program from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing the products, where an application data capture module populates an application for the financial product based on the gathered background data."

Neither Bennett, nor Dines, nor Aaker, nor Gittins, alone, or in combination, disclose transferring the **crop planning data** (or background data) and incentive

program data on the preferential program to a financial screening process, as recited in claims 1, 11, or 21. The Office Action acknowledges that "Bennett does not disclose receiving **crop planning or background data of a particular producer and wherein the crop planning data is sent along with the inventor program to a financial screening process.**" (Office Action at p. 5, Emphasis Added.)

With respect to claims 11 and 21, the Office Action erroneously states that "Bennett discloses where informational data associated with the transaction may be sent with the incentive program data for financial screening (paragraph 127)..." (Office Action at p. 4, Emphasis Added.) The Office Action mischaracterizes Paragraph 127 of Bennett because Bennett does not refer to any "incentive program data" in Paragraph 127 and even the transmission of good or service data to a lender is optional. Instead, Bennett merely references that: (1) "in block 1150, loan applications are delivered to all applicable integrated lenders that operate independently" and (2) "the information provided to the applicable lenders that operate independently may or may not contain any information pertaining to any selection of good(s) and/or service(s) performed in the block 1110." (Paragraph 127.)

Dines does not address the above deficiencies of Bennett. The Office Action vaguely cites five pages of Dines for the proposition of "offering of incentives and loans for agricultural related transactions." (Office Action at p. 5) However, the Office Action mischaracterizes or confuses the significance of Dines and does not quote any particular language that supports the foregoing misinterpretation of Dines. Dines neither discloses incentive programs for agricultural input products, nor sharing background data for both the incentive program and financial screening. Rather, Dines discloses a method for forming a loan agreement where the lender contractually shares in the proceeds from a future sale of commodity. (Dines, Abstract and claim 1.) In Dines the lender shares in the grower's risk based on the price level of the commodity, for example. (Dines at paragraph 63.) The lender may provide a lower interest rate to the grower in exchange for the ability to share benefits when the market price of a commodity grown by the grower is high. (Dines, paragraphs 62 and 63.)

The above differences between the claims and the prior art favor a finding of obviousness under the analysis of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The alleged combination of Bennett, Dines, Aaker, and Gittins relies upon the contrived selection of features from four different references that were not designed

or even contemplated to work together. Further, the Office Action, selectively combines features of the multiple references with the improper use of hindsight and with misinterpretation of the plain meaning of the references.

For the above reasons, Applicants respectfully request the reversal of the section 103 rejections of claims 1, 11, and 21.

Claims 2-10, 27, 28, and 31 depend on claim 1 and are patentable for at least similar reasons to claim 1. Claims 12-20, 29, and 32 depend on claim 11 and are patentable for at least similar reasons to claim 11. Applicants respectfully request the reversal of the section 103 rejection of the above claims. Claims 22-26, 30 and 33 depend on claim 21 and are patentable for at least similar reasons to claim 21.

Additional Rejections Under Section 103

Claims 6, 10, 16, 20, 24 and 31-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett, Dines and Aaker and further in view of Official Notice. This rejection should be reversed for the following reasons.

The alleged combination of Bennett, Dines and Aaker fail to meet independent claims 1, 11, and 21 for at least reasons similar to those more fully set forth above in conjunction with the discussion of the rejection based on Bennett, Dines, Aaker and Gittins. The Official Notice (e.g., Office Action on pp. 8-10) merely relates to certain features of specific dependent claims that depend upon claims 1, 11 and 21, and, hence, cannot cure the above noted deficiencies in claims 1, 11 and 21. Applicants respectfully requests reversal of the above rejection of claims 6, 10, 16, 24, and 31-33, which depend upon independent claim 1, 11 or 21.

For the foregoing reasons, Appellants respectfully requests the reversal of the 35 U.S.C. 103 rejection of claim 19. Similarly, the Appellants respectfully requests the reversal of the 35 U.S.C. 103 rejection of claims 20-22, because claims 20-22 depend upon claim 19 and are patentable for at least similar reasons to claim 19.

For the foregoing reasons Appellants submit that the rejection of the all pending claims was in error and should be reversed.

Any fees or charges due as a result of filing of the present document may be charged against Deposit Account 04-0525.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1 (previously presented). A method for facilitating an incentive program via an electronic data processing system, the method comprising the steps of:

establishing a library as a comprehensive list of available incentive programs, for agricultural input products targeted to producers of agricultural products, the library stored in a data storage device associated with the data processing system;

selecting, by a particular retailer with a retail level of access to the data processing system, the available incentive programs from the library of incentive programs through the discretion of the particular retailer servicing a particular producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs;

receiving crop planning data of the particular producer at the data processing system via an interface, the crop planning data comprising background data on the particular producer or the producer's operations;

searching the library or its selected, available incentive programs based upon the received crop planning data to select a tailored list of candidate incentive programs from the established library of available incentive programs;

making information accessible on or limited to the available candidate incentive programs in the tailored list to the particular producer via the interface;

supporting selection of a preferential one of the candidate incentive programs via the interface; and

transferring the crop planning data and incentive program data on the preferential one from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing of the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered

background data.

2 (original). The method according to claim 1 wherein each one of the available incentive programs is selected from the group of programs consisting of a financing program, an equipment financing program, a promotional program, a sales discount program, a rebate program, a purchasing program, a leasing program, and a transactional program associated with a transaction in an agricultural input product.

3 (original). The method according to claim 1 wherein the crop planning data comprises one or more of the following: a crop plan, background producer data, demographic data, a list of applicable agronomic inputs and corresponding quantities, a list of agricultural input products and corresponding quantities, a chemical treatment plan or regimen, a growing practices plan or regimen, a seed identifier, a seed quantity, and insecticide identifier, an insecticide quantity, a pesticide identifier, a pesticide quantity, a fungicide identifier, a fungicide quantity, a fertilizer identifier, and a fertilizer quantity.

4 (original). The method according to claim 1 further comprising providing financing for a monetary difference between a funded amount of the preferential incentive program and a total requisite amount of a crop plan for a particular producer for a particular growing season.

5 (original). The method according to claim 1 wherein the searching further comprises:

searching for a match of program identifiers between crop planning data and program data of the available incentive program to identify candidate incentive programs.

6 (original). The method according to claim 1 wherein the searching further comprises translating the crop planning data having at least a brand name into a generic name for comparison to program data associated with corresponding available incentive programs.

7 (original). The method according to claim 1 wherein making information accessible

comprises electronically sending data to the particular producer via a communications network.

8 (original). The method according to claim 1 where making information accessible comprises providing the producer with access to specifications of the candidate incentive programs through a retailer interface.

9 (original). The method according to claim 1 wherein the preferential one of the available programs is associated with one or more corresponding financial products for which a financial application is electronically accessible.

10 (original). The method according to claim 1 wherein the transferring comprises formatting at least one of the crop planning data and the incentive program data into an standard file format capable of interpretation by the financial screening process.

11 (previously presented). A method for facilitating an incentive program via an electronic data processing system, the method comprising the steps of:

- establishing a library as a comprehensive list of available incentive programs, for agricultural input products targeted to producers of agricultural products, the library stored in a data storage device associated with the data processing system;

- selecting, by a particular retailer with a retail level of access to the data processing system, the available incentive programs from the library of incentive programs through the discretion of the particular retailer servicing a producer based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs;

- gathering background data on at least one of the producer and operations of the producer via an interface for communication to the data processing system;

- searching the library of available incentive programs based upon the gathered background data on the particular producer or the producer's operations to select a tailored list of available incentive programs from the established library;

making information accessible on or limited to the available incentive programs in the tailored list to the producer via the interface;

supporting selection of a preferential one of the available incentive programs via the interface; and

transferring the gathered background data and selected incentive program data from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing the products via electronic communications, where an application data capture module populates an application for the financial product based on the gathered background data.

12 (original). The method according to claim 11 wherein each one of the available incentive programs is selected from the group of programs consisting of a financing program, an equipment financing program, a promotional program, a sales discount program, a rebate program, a purchasing program, a leasing program, and a transactional program associated with a transaction in an agricultural input product.

13 (original). The method according to claim 11 wherein the background data comprises one or more of the following: background producer data, demographic data, information on the producer or the producer's operations, historical information on the producer's purchase of agricultural input products, biographical data on the producer, demographic data on the producer, historical financial information on the producer, and a transactional history of the producer with respect to agricultural equipment.

14 (original). The method according to claim 11 further comprising providing financing for a monetary difference between a funded amount of the preferential incentive program and a total requisite amount of a crop plan for a particular producer for a particular growing season.

15 (original). The method according to claim 11 wherein the searching further comprises:

searching for a match of program identifiers between background data and

program data of the available incentive program to identify candidate incentive programs.

16 (original). The method according to claim 11 wherein the searching further comprises translating the background data having at least a brand name into a generic name for comparison to program data associated with corresponding available incentive programs.

17 (original). The method according to claim 11 wherein making information accessible comprises electronically sending data to the particular producer via a communications network.

18 (original). The method according to claim 11 where making information accessible comprises providing the producer with access to specifications of the candidate incentive programs through a retailer interface.

19 (original). The method according to claim 11 wherein the preferential one of the available programs is associated with one or more corresponding financial products for which a financial application is electronically accessible.

20 (original). The method according to claim 11 wherein the transferring comprises formatting at least one of the background data and the incentive program data into a standard file format capable of interpretation by the financial screening process.

21 (previously presented). A data processing system for facilitating an incentive program, the system comprising:

- a program management module for establishing a library of available incentive programs for a producer and for gathering background data on at least one of the producers and operations of the producer, for agricultural input products targeted to producers of agricultural products, the library stored in a data storage device associated with the data processing system, the available incentive programs selected, by a retailer with a retail level of access, from a comprehensive list of incentive programs through the discretion of a particular retailer servicing the producer based on retailer preferences comprising a geographic region that the

retailer services, historic sales, or a supplier relationship with one or more suppliers of the incentive programs, the retailer level of access being different from a producer level of access to the data processing system by the producers, the particular retailer controlling the level of access of the producers to the data processing system to support limiting accessible information to the producers to the selected available incentive programs;

a search engine for searching the library of available incentive programs based upon the gathered background data on the particular producer or the producer's operations to select a candidate list of candidate incentive programs from the library of available incentive programs;

a selector for supporting selection of preferential one of the candidate incentive programs for a financial application; and

a transferring agent for transferring the gathered background information and selected preferential incentive program from a program manager for the incentive programs to a financial screening process of a financial screening system of the data processing system to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing the products, where an application data capture module populates an application for the financial product based on the gathered background data.

22 (original). The system according to claim 21 further comprising a first data storage device for storing the gathered background data and selected program data associated with the preferential one; the transferring agent sending at least one of selected program data and background data from the first data storage device to a financial screening system.

23 (original). The system according to claim 21 further comprising a user administration module for administering the available incentive programs and financing activities for one or more users by allowing a retailer to define any of the following: a user profile for a user of the financial processing system, a retailer profile, and a producer profile.

24 (original). The system according to claim 21 further comprising a security module for providing the producer with access to one or more resources of the system after

receiving a producer identifier, a corresponding producer identifier password, a retailer identifier, and a corresponding retailer identifier password.

25 (previously presented). The system according to claim 21 wherein the program manager comprises a crop planning interface for supporting the transfer of crop planning data, originated by a crop planner, to the program management module.

26 (original). The system according to claim 25 wherein the crop planning data may include one or more of the following: a crop plan, background producer data, demographic data, a list of applicable agronomic inputs and corresponding quantities, a list of agricultural input products and corresponding quantities, a chemical treatment plan or regimen, a growing practices plan or regimen, a seed identifier, a seed quantity, an insecticide identifier, an insecticide quantity, a pesticide identifier, a fertilizer identifier, and a fertilizer quantity.

27 (previously presented). The system according to claim 1 wherein the searching further comprises returning the tailored list of the candidate incentive programs and potentially relevant incentive programs even if a submitted crop plan or query fails to satisfy a minimum purchase or minimum transaction requirement.

28 (previously presented). The method according to claim 1 further comprising the particular retailer limiting the incentive programs to certain providers among the suppliers.

29 (previously presented). The method according to claim 11 further comprising the particular retailer limiting the incentive programs to certain providers among the suppliers.

30 (previously presented). The system according to claim 21 further comprising the particular retailer limiting the incentive programs to certain providers among the suppliers.

31 (previously presented). The method according to claim 1 wherein the transferring comprises transferring, within the data processing system, the crop planning data

and the incentive program data on the preferential one from the program manager to, the financial screening process of, the financial screening system after successful authentication of a user identifier and a corresponding password.

32 (previously presented). The method according to claim 11 wherein the transferring comprises transferring, within the data processing system, the gathered background data and the selected incentive program data from the program manager to, the financial screening process of, the financial screening system, after successful authentication of a user identifier and a corresponding password.

33 (currently amended). The system according to claim 21 wherein the transferring agent is arranged to transfer, within the data processing system, the gathered background information and selected preferential incentive program from a the program manager to, the financial screening process of, the financial screening system after successful authentication of a user identifier and a corresponding password.

IX. EVIDENCE APPENDIX

No evidence.

X. RELATED PROCEEDINGS APPENDIX

None.